

STATE OF MICHIGAN
COURT OF APPEALS

ELIZABETH A. COOK,

Plaintiff-Appellant,

v

CHRISTOPHER W. HARDY,

Defendant-Appellee.

UNPUBLISHED
February 24, 2005

No. 250727
Ingham Circuit Court
LC No. 02-001399-NI

Before: Zahra, P.J., and Neff and Cooper, JJ.

ZAHRA, P.J., (*dissenting*).

I disagree with the majority's application and interpretation of *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004). I conclude the trial court properly found that the injuries sustained by plaintiff did not affect the course or trajectory of her normal life. I would affirm.

Plaintiff identified three aspects of her life that were affected by her injury: (1) her education; (2) her employment; and (3) her recreational activities. The interruption to her normal life activities in these three areas was minimal and temporary. Plaintiff's education was only minimally interrupted, as her class load was reduced for only one semester and she received her associate's degree the following semester. Plaintiff did not return to her part time job after her accident. However, less than one month after the accident plaintiff commenced an internship in which she worked ten to fifteen hours a week. Further, no physician placed any restrictions on plaintiff's ability to work. Self-imposed restrictions do not establish an injury that affects one's ability to lead a normal life. *Kreiner, supra* at 133, n 17. Plaintiff maintains she can no longer engage in "impact" sports. However, plaintiff resumed skateboarding shortly after the accident and, significantly, plaintiff never asserted that participation in impact recreational activities was a significant part of her life.

The facts of this case are virtually indistinguishable from the facts in *Straub v Collette*, the companion case to *Kreiner*. *Kreiner, supra* at 134-136. There, the plaintiff sustained a broken bone in one finger, tendon injuries to two other fingers and open wounds to his hand. The plaintiff underwent surgery to repair his tendon injuries, wore a cast for approximately one month, and took pain medication and participated in physical therapy following the surgery. The plaintiff's injuries healed in approximately two months. However, plaintiff missed two to three months of work as a cable lineman. The plaintiff also missed four months of weekend work as a guitarist in a band. In addition, the plaintiff had difficulty performing household duties that he

traditionally performed. The Supreme Court concluded that the plaintiff in *Straub* had not sustained a serious impairment of a body function because plaintiff's injuries were "not extensive, recuperation was short, unremarkable, and virtually complete, and the effect of the injury on body function was not pervasive. . . ." *Id.* at 135-136. The same result is warranted in this case.

/s/ Brian K. Zahra